

Document 1106 is an e-mail from a KPMG member to others regarding the manner of filing a tax return schedule. The document is claimed to be protected from production by reason of § 7525. A review of the document discloses that the author seeks information regarding the preparation of a 1040 tax form. The substance of the e-mail discusses the preparation of a tax form and accompanying schedules. For the reasons stated with respect to Documents 1089, 1090 and 1091 this document does not fall within the scope of the § 7525 privilege. It is recommended that this document be produced.

Document 1180 is an e-mail from a KPMG member to others. It is claimed to be subject to the § 7525 privilege. The e-mail contains no tax advice to a taxpayer or inquiry on behalf of a taxpayer. Rather, it inquires about the opinions to be expressed in an opinion letter, the same letter that Judge Hogan ruled had not been shown to be subject to the § 7525 privilege because it was to be used in conjunction with the preparation and filing of a tax return. This document contains no tax advice, instead seeks advice as to the contents of an opinion letter. This document has not been shown to fall within the scope of the § 7525 privilege. It is recommended that this document be produced.

Document 1190. This document consists of an incomplete exchange of e-mails between KPMG members. The e-mails contain no tax advice to a taxpayer client but instead raise a business matter issue. The respondent has not shown that this document

falls within the scope and protection of § 7525. It is recommended that this document be produced.

Document 1196 consists of an exchange of e-mails between KPMG members. The document does not contain tax advice to a taxpayer client on a tax matter. The emails discuss a policy issue and its formulation so as to meet potential challenges to clients' tax returns. The respondent has not shown that this document is entitled to protection from production by reason of § 7525. It is recommended that the document be produced.

Documents 1266, 1267 and 1268 are a series of e-mail communications informing KPMG members of the progress being made in the development or modification of a product already marketed or intended to be marketed. These e-mails discuss a business related matter and do not provide a taxpayer with tax advice on a tax matter so as to fall within the protection of § 7525. By way of illustration, one of the e-mails concludes, " I know it has been very frustrating waiting for this strategy to come together, but we are very close now....". It is recommended that these documents be produced.

Documents 1273 and 1274. The privilege log states that these documents are a portion of an "undated confidential opinion from KPMG concerning tax advice relating to the transaction" and therefore privileged under § 7525. There is nothing in these

documents to support the claimed privilege. The documents appear to be a page from Documents 22 and 44. Judge Hogan has found that these documents have not been shown to be protected from disclosure under § 7525. It is recommended that these documents be produced.

Documents Claimed To Be Subject To The Work Product Privilege

The Special Master has examined the documents for which the work product privilege is claimed and, under the applicable law, makes the following findings and recommendations.

Document 1132. The privilege log identifies this document as a draft of a confidentiality agreement. It can not fairly be said in the light of all the circumstances that a lawyer prepared this document on a subjective belief that litigation was a reasonable possibility. It is nothing other than a draft agreement prepared and used in the ordinary course of business in which the parties agree not to disclose to third parties information given in confidence to cement a business relationship. It is recommended that this document be produced.

Document 1272. This document consists of a memorandum and an e-mail neither of which has been shown to have been prepared by a lawyer. The work product privilege protects written materials lawyers prepare in the subjective belief that litigation is a

reasonable possibility. No such showing has been made. The memorandum discuss the findings following a review of tax files by the Tax Controversy Services Group of KPMG. The e-mail explains the reason for the memorandum and a minimal disclosure of advice from the OGC with respect to ordinary business practices. It is recommended that this document be produced.

Documents Claimed To Be Subject To All Three Privileges.

The Special Master has examined the documents claimed to be protected from discovery under all three privileges and, in accordance with the applicable law, makes the following recommendations.

Document 93 and 446 are partially duplicates. Document 93 consists of a cover letter and an invoice for legal services from a law firm. Document 446 is solely the cover letter. The log states that the non-privileged invoice will voluntarily be produced. The cover letter provides legal advice with respect to the tax deductibility of certain of the billed items. As such it falls under the protection of the attorney client privilege and § 7525. There is no showing that it falls under the work product privilege since there is no showing of prospective litigation. It is recommended that these documents need not be produced.

Document 351 is now claimed not to fall within the scope of the summons. I believe it does and accordingly will be evaluated with respect to the claimed privileges. The document consists of a fax cover sheet and a draft letter. The fax cover sheet merely contains the name of the person to whom the fax and attachment were sent. It contains no legal or tax advice on a legal or tax matter so as to render it privileged under the attorney client privilege or § 7525; moreover, there is no showing that it was prepared in reasonable anticipation of litigation under all the circumstances as they then existed. Therefore, it is recommended that the fax cover sheet be produced. However, the attached letter does make reference to tax advice and a request for a legal opinion. There is a sufficient showing that the letter is protected from disclosure under both the attorney client and § 7525 privileges. There is no showing that a lawyer prepared this letter under a subjective belief that litigation was a real possibility. In other words it was not prepared with a view toward litigation but rather for the sole purpose of providing legal advice in response to a specific request. Therefore, the work product privilege has not been shown to be applicable. It is recommended that the fax cover sheet be produced but that the attached letter need not be produced.

Document 354. The log identifies this document as a letter from a lawyer to another lawyer regarding the transfer of certain partnership interests of a mutual client. It appears to be subject to both the attorney client and § 7525 privileges since it has been shown that the purpose of the letter was to secure and provide assistance in a legal

proceeding. However, there is no showing in the light of the nature of the document and the facts that have been disclosed that it was prepared or obtained because of the prospect of litigation. Therefore, there is no showing that the work product privilege is applicable. It is recommended that this document need not be produced.

Document 355 This document is described in the log as a letter from a lawyer to another lawyer with copies to KPMG and a mutual client. An examination of the document confirms that it is the first page of a letter from a lawyer to another lawyer enclosing draft amendments to a partnership agreement. It clearly has been shown to be a communication from a lawyer providing legal assistance in a tax matter and not for the purpose of committing a crime or tort so as to bring it within the protection of the attorney client privilege and § 7525. There has been no showing, however, that it was prepared on a subject belief that litigation was reasonably anticipated so as to successfully invoke the work product privilege. It is recommended that this document need not be produced.

Document 356 is a letter from a law firm to a client with respect to a legal matter. It has been shown to fall within the protection of the attorney client privilege but not § 7525 since there is no showing that it contains advice regarding a tax matter. Nor has it been shown to be protected from disclosure by the work product privilege because there has been no showing in the document or in supplemental documents to reasonably

conclude that it was prepared because of the prospect of litigation. It is recommended that this document need not be produced.

Document 357. This document is a duplicate of Document 355 except it contains the complete letter accompanying the draft amendments to a partnership agreement rather than just the front page. The same reasons apply to this document as to Document 355. It is recommended that this document need not be produced.

Document 386 is similar to, if not identical to Documents 442, 822 and 839 except for the client's name. Judge Hogan found the respondent has not shown that either the work product privilege or the § 7525 applies to Documents 442, 822 and 839 but that they were found to be subject to the attorney client privilege and therefore need not be produced. (Memorandum Opinion, Dec. 20, 2002, p 16). The same reasoning holds true with respect to Document 386.

Document 463 is a letter from a law firm to a client regarding legal representation. Although it provides no legal or tax advice it does discuss matters of legal representation and therefore can be said to fall within the scope of the attorney client privilege. However, since it contains no tax advice nor has there been any showing that it was prepared with a view toward prospective litigation, it is not protected from

production by reason of § 7525 or the work product privilege. It is recommended that this document need not be produced.

Document 541 is similar to Documents 422, 539, 540, 542 and 543. All these documents relate to correspondence to and from a law firm and KPMG regarding editorial changes in an opinion letter their mutual client received from another law firm relating to a tax matter. The underlying letter which is sought to be changed was found by Judge Hogan (Documents 442, 539 and 540) to be privileged from disclosure under the attorney client privilege. Therefore, the correspondence with respect to changes to the underlying letter (Document 442) fall within the protection of the attorney client privilege for the same reasons stated by Judge Hogan. As with Document 442, this document has not been shown to have been prepared with a view toward prospective litigation nor have they been shown to fall within the scope of § 7525. Only the attorney client privilege applies, therefore, it is recommended that this document need not be produced.

Documents 653, 654 are duplicate letters and **Documents 644 and 646** are similar letters from a law firm to a client regarding certain tax matters and providing tax advice. Judge Hogan has ruled that similar, if not identical letters, except for names and addresses, have been shown to be subject to the attorney client privilege but not the work product privilege or § 7525 privilege. (See Documents 422, 822 and 839 also

Memorandum Opinion, Dec. 20, 2002, p. 16). It is recommended that these documents be subject to the same ruling and that they need not be produced.

Document 682 and 683 are letters from a lawyer to his clients providing advice in a legal matter. They have been shown to fall within the scope of the attorney client privilege. However, they contain no tax advice nor have they been shown to have been prepared with a reasonable view toward prospective litigation. Therefore, neither § 7525 nor the work product doctrine have been shown to be applicable. It is recommended that these documents need not be produced by reason of the attorney client privilege only.

Document 713 is a memo from a lawyer to KPMG concerning a mutual client. It discusses tax matters relating to the client. It has been shown to fall within the protection of the attorney client privilege and § 7525 since it seeks tax advice. There is no showing, however, that the prospect of litigation was reasonably anticipated so the work product privilege has not been shown to be applicable. It is recommended that this document need not be produced.

Documents 802 and 804 are duplicate copies of a fax from a lawyer to KPMG regarding a mutual client. (Document 804 is sought to be privileged from production by reason of the attorney client privilege and § 7525 only. The work product doctrine is not asserted with respect to document 804 although it is with respect to document 802). The

fax discloses legal and business matters concerning their client. Therefore, it has been shown to fall within the scope of the attorney client privilege. However, it contains no tax advice nor is there any showing that it was created with a reasonable expectation of prospective litigation. Accordingly only the attorney client privilege has been shown to be applicable. It is recommended that these documents need not be produced.

Document 815 is a draft of a letter to a tax payer by a tax advisor. However, it contains no tax advice nor does it disclose any legal advice to a client. Therefore, neither the attorney client privilege nor the § 7525 privilege have been shown to be applicable. In addition, there has been no showing that it was created by a lawyer in reasonable anticipation of future litigation. Accordingly, none of the claimed privileges have been shown to apply. It is recommended that this document be produced.

Document 846 is a file memorandum of an oral conversation with a tax payer and his attorney. The document discusses facts conveyed to an attorney and his client (the tax payer) which had legal implications and also provided tax advice. There is no showing it was prepared by an attorney in reasonable anticipation of litigation. It has been shown to fall within the scope of the attorney client privilege and § 7525 privileges but not the work product privilege. It is recommended that this document need not be produced.

Documents 847 and 858 are duplicate copies of an e-mail exchange between KPMG and an investment advisor regarding tax advice to be furnished their mutual client. Therefore, § 7525 has been shown to be applicable. There is no showing of any legal advice provided the client nor is there any showing that the exchange involved any writing by a lawyer that would bring the exchange within the scope of the work product doctrine. Accordingly, only the privilege created by § 7525 has been shown to be applicable. It is recommended that these documents need not be produced.

Document 888 is an e-mail from outside counsel to a KPMG member. This two sentence email has not been shown to be subject to the attorney client or § 7525 privileges nor has it been shown to have been created with a view toward prospective litigation so as to fall within the scope of the work product privilege. It is recommended that it be produced.

Document 892 is an e-mail from a KPMG member to another KPMG member referencing an earlier discussion with outside counsel about a KPMG opinion letter. Outside counsel represented KPMG clients in a tax matter. Therefore the discussion involving a mutual client falls within the scope of the attorney client privilege and, since it involved a tax matter, it also fell within the scope of the § 7525 privilege. There is no showing, however, to bring the e-mail within the scope of the work product privilege

since the e-mail was not prepared by a lawyer in reasonable anticipation of prospective litigation. It is recommended that this document need not be produced.

Document 896 is a series of e-mails about a fee alleged to be due outside counsel by a client of both the outside counsel and KPMG. The last email in this series copied in associate general counsel of KPMG. However, the e-mail requested no legal opinion, assistance or advice and none was given. This is strictly a business related document concerning a legal fee. It has not been shown to fall within the scope of the attorney client privilege or the § 7525 privilege. And since the document was not prepared by a lawyer, although it expressed concern about possible legal action, it has not been shown to fall within the parameters of the work product privilege. It is recommended that this document be produced.

Document 897. This exchange of e-mails builds on Document 896. The additions include responses from associate general counsel providing legal advice in a potentially litigious matter as well as tax advice. The document has been shown to fall within the scope of the attorney client privilege, the § 7525 privilege and the work product privilege. It is recommended that it need not be produced.

Document 898. This document is similar to Document 897. It differs from document 897 in that one email from the Office of General Counsel has been deleted

while another email, sent about a half hour later, containing legal advice has been added.

This document containing legal advice about a tax matter has also been shown to fall within the protection of the attorney client and § 7525 privileges. It also discusses matters involving the potential for prospective litigation and therefore has been shown to fall within the scope of the work product privilege. It is recommended that this document need not be produced.

Document 899. This document, an exchange of e-mails, is similar to Documents 897 and 898. It is recommended that it need not be produced for the reasons stated with respect to those documents.

Document 900. This exchange of e-mails is similar to document 896 in that it contains no request for a legal opinion nor does it contain any legal opinion. It merely discusses a business issue. Moreover, it was not prepared by a lawyer nor does it contain any tax advice. Accordingly, it has not been shown to fall within any of the claimed privileges. It is recommended that it be produced.

Document 901 and 1070. These duplicate documents contain essentially the same e-mails discussed with respect to Document 896 etc. There is no e-mail to or from legal counsel regarding any legal issues or seeking any tax advice although general counsel is copied in. The e-mails discuss a business problem and have not been shown to

fall within the scope of any of the three privileges claimed. It is recommended that these documents be produced.

Document 907 is part of a series of e-mail exchanges between KPMG members about a business matter. This series includes Documents 908 and 909. There is nothing in this document which seeks or contains legal advice or assistance or tax advice to a tax payer so as to implicate the attorney client privilege or § 7525 privilege. It is strictly a business related document. Moreover, there is no showing that it was prepared by a lawyer in anticipation of prospective litigation so as to be protected under the work product privilege. It is recommended that it be produced.

Document 914 and 915. Document 914 is a series of e-mails among various KPMG members discussing a request by an attorney for a mutual tax client for a change in the wording of an opinion letter (Document 44 found by Judge Hogan not to be privileged under § 7525). Document 915 is the e-mail from a KPMG member to others initiating the inquiry and attaching the opinion letter. The opinion letter is similar to Document 44. It does not fall within the scope of § 7525. Nor does it fall within the attorney client privilege since it was not prepared by an attorney but instead by a tax advisor. It was not prepared by a lawyer and there is no showing it was prepared in reasonable anticipation of prospective litigation but instead was prepared as a supplement

in support of a tax return (as found by Judge Hogan). Therefore, it has not been shown to fall within the ambit of the work product privilege.

The e-mail accompanying the opinion letter which together constitute Document 915 is also a part of the email exchange of Document 914. Those e-mails discuss a requested by a lawyer for a minor change in the verbiage of the opinion letter. The e-mails disclose no request for legal or tax advice or assistance nor is there any showing that prospective litigation maybe in the offering. In short, there has been no showing that either document is protected from production by any of the three claimed privileges. It is recommended that these documents be produced.

Document 928. This exchange of e-mails concerns changes in documents similar to Document 442 which Judge Hogan determined was privileged. However the e-mails merely discuss cosmetic typo changes to the Document 442 prototype. The e-mails do not discuss or reveal any substantive tax or legal advice so as to protect them from disclosure under the attorney client or § 7525 privileges. Nor has there been any showing that this document was prepared by a lawyer in reasonable contemplation of prospective litigation so as to invoke the work product privilege. It is recommended that it be produced.

Document 929 is an e-mail to KPMG members which discusses minor editorial changes requested by a taxpayer to an opinion letter furnished him by KPMG. The

opinion letter is similar to Documents 22, 44 and 45 which Judge Hogan found not to be subject to the § 7525 privilege. The e-mail discussion adds nothing to the underlying opinion letter from KPMG. The second paragraph of the e-mail also discusses a requested change by the taxpayer to the law firm opinion letter. Judge Hogan found that a similar opinion letter (Document 442) was protected from disclosure by the attorney client privilege but not the § 7525 privilege or the work product privilege. Therefore, it is recommended that Document 929 be produced but that the second paragraph be redacted. No other portion of the e-mail has been shown to contain information subject to any of the claimed privileges since it contains no legal or tax advice or request for legal or tax advice (except the second paragraph) nor has it been shown to have been prepared by a lawyer in reasonable anticipation of litigation.

Document 933 is a cover letter from a lawyer to a client involving a legal proceeding. It contains legal advice and collateral tax advice, therefore, has been shown to be protected by the attorney client privilege and § 7525. It has not been shown to have been prepared in reasonable anticipation of litigation. Therefore, the work product doctrine has not been shown to be applicable. It is recommended that it need not be produced.

Document 944 consists of a half page of cryptic handwritten notes. It is claimed to be subject to the attorney client, § 7525 and work product privileges. Although it

appears to reflect a summary of a conversation with a lawyer, there is no showing of an attorney client relationship. From other documents it is clear that this document reflects a conversation with a lawyer with whom KPMG had a marketing arrangement and not the traditional lawyer client relationship. As such it has not been shown to be protected from disclosure by the attorney client privilege. Nor is there any showing that it contains tax advice to a taxpayer or that it was prepared by a lawyer in reasonable anticipation of future litigation. Absent such a showing neither the statutory privilege nor the work product privilege have been shown to be applicable. It is recommended that this document be produced.

Documents 948, 949, 953, and 954 are duplicates. They appear to be templates used to memorialize oral tax advice furnished a taxpayer client. They are not specific or individualized as to any one client. They are merely a form or guide to be followed to memorialize a discussion with a client . They have not been shown to be subject to the attorney client privilege since there is no showing of an attorney involvement. Nor do they contain individualized tax advice contemplated by the statute. Lastly, there is no showing they were prepared by a lawyer in contemplation of prospective litigation. Rather, they appear to be forms used to document a file. There has been no showing that these documents are protected from disclosure under any of the three claimed privileges. It is recommended that they be produced.

Document 1001. This exchange of e-mails is claimed to be subject to all three privileges. The lawyer referred to in the e-mails is one with whom KPMG had a business or marketing arrangement and not a true attorney client relationship. Moreover nothing in the exchange discloses any facts or opinion from or to a lawyer. The attorney client privilege has not been shown to exist. Furthermore, the document has not been shown to have been prepared by a lawyer much less to have been prepared in reasonable anticipation of litigation so as to be protected by the work product privilege. Lastly, the document does not contain tax advice or opinion to a tax payer client. The exchange merely discusses the contents of a template opinion (Doc. 1142) which has been found by Judge Hogan not to be protected from disclosure by § 7525. It is recommended that this document be produced.

Documents 1009 and 1010. These similar documents consists of an e-mail and reply between KPMG members regarding a request by a lawyer on behalf of a client who is also a client of KPMG regarding a tax matter. The documents are claimed to be subject to all three privileges. They have been shown to involve a discussion of a legal/tax matter between a lawyer and KPMG concerning their mutual client. Therefore, they have been shown to be protected from production under the attorney client and § 7525 privileges. There is no showing that these documents were created by a lawyer in reasonable anticipation of litigation so as to render them privileged under the work product privilege. It is recommended that they need not be produced.

Document 1013. This memorandum among KPMG members is claimed to contain a draft of an opinion relating to a tax transaction. It is claimed to be subject to all three privileges. The document contains nothing other than a discussion of a recent court opinion. There is no showing that it was prepared by a lawyer nor does it contain any client specific tax advice. It is merely an educational memorandum regarding a recent decision of a Circuit Court regarding a tax matter. It has not been shown to be protected from production by reason of any of the three privileges. It is recommended that it be produced.

Document 1045. This document is a letter from KPMG to a client with a copy to the client's lawyer. The log claims it provides tax advice regarding a transaction and is privileged under all three privileges. The letter merely seeks to set up a meeting to discuss trends that may impact on tax related matters. The letter does not contain any facts upon which a legal opinion is sought nor does it contain facts for use in a legal proceeding. Therefore, the attorney client privilege has not been shown to be applicable. Nor does it seek or provide tax advice so as to implicate § 7525. Moreover, there is no showing that it was written by a lawyer in reasonable anticipation of litigation so as to make the document subject to the work product privilege. It is recommended that this document be produced.

Document 1046 is a KPMG memorandum to the file memorializing a meeting with a tax client, his lawyer and business associate during which certain tax issues were discussed and advice provided. This document is similar to the many other file memoranda found to be subject to the § 7525 privilege. It too has been shown to be within the scope of the § 7525 privilege. However it is also claimed to be subject to the attorney client and work product privileges. It discloses no facts upon which legal advice is sought nor facts intended to be used in litigation so as to protect it under the attorney client privilege. Nor was it created by a lawyer in reasonable anticipation of litigation so as to render it privileged under the work product privilege. It has only been shown to be privileged under § 7525. It is recommended that it need not be produced.

Documents 1068, 1071 and 1075 are similar documents sought to be privileged under all three privileges. They consist of an e-mail from a KPMG member to another member with a copy to KPMG's associate general counsel to which is attached a template of a memorandum of oral advice. The e-mail directs the recipient to follow the form in conversations with tax clients. The transmission to legal counsel appears to be solely for informational purposes only. No legal advice or opinion is requested or provided nor is there any showing that it was prepared by a lawyer in reasonable contemplation of litigation so as to bring it within the scope of either the attorney client or work product privileges. However, the form does provide specific advice on tax matters so as to bring it within the scope of § 7525. It is recommended that the e-mail be produced since there

is no showing that it is privileged under any of the three privileges but that the attached form need not be produced since it falls within the scope of § 7525.

Document 1074 is merely a follow up e-mail to the e-mail contained in Documents 1068, 1071 and 1075. The attachment referred to in this e-mail is not attached to this document. Although a copy of this document was sent to associate general counsel it neither seeks legal advice nor does it contain any facts upon which legal advice is sought or which may be used in a legal proceeding. Nor does this document provide any tax advice to a client so as to subject it to the § 7525 privilege. Lastly, it was not created by a lawyer in reasonable anticipation of litigation so as to implicate the work product privilege. It is recommended that it be produced.

Document 1078 and 1082 are duplicate memoranda memorializing a conversation between KPMG and attorneys for a mutual client. They discuss tax advice which had previously been given, events that subsequently developed and current tax advice and recommendations. This memo is similar in nature to Document 631. It has been shown to be protected from production by § 7525. Although this document is also claimed to be subject to the attorney client and work product privileges, there has been no showing that these privileges are applicable. The discussion with the attorney by the KPMG members did not disclose any facts provided by the client for the purpose of

obtaining a legal opinion or advice so as to implicate the attorney client privilege. Nor has there been any showing that the document was created by a lawyer memorializing his thoughts and views in reasonable anticipation of litigation so as to trigger the work product privilege. It is recommended that the document need not be produced.

Document 1079 consists of an e-mail cover sheet from one KPMG member to another enclosing a draft of a letter to a tax client. It appears to be a supplement to document 1078. The draft letter contains tax advice to a tax payer and has been shown to fall within the parameters of § 7525. However the e-mail cover sheet has not been shown to be subject to § 7525. Nor has there been any showing to bring either the e-mail or the draft letter within the protection of the attorney client privilege or the work product privilege. It is recommended that the e-mail cover sheet be produced but that the draft letter need not be produced.

Document 1080 is an informational e-mail among KPMG members. There is nothing in the e-mail that brings the e-mail itself within any of the three claimed privileges. It is recommended that the document be produced.

Document 1081 is a duplicate of Document 1079 except it does not contain the e-mail cover sheet contained in Document 1079. It is recommended that it need not be produced for the reasons stated with respect to Document 1079.

Document 1084 and 1085 memorializes a conversation between KPMG and a client's lawyer and chief financial advisor during which they discussed certain tax events, advice and recommendations. They are similar to Document 631 and have been shown to be subject to the § 7525 privilege in that they memorializes a conversation between a tax advisor and a client's legal representatives for the purpose of providing tax advice. They have not been shown to be subject to the attorney client privilege because KPMG provided no facts to a lawyer for the purpose of seeking a legal opinion or legal advice in a legal proceeding. Nor have they been shown to fall within the work product privilege because it was not prepared by a lawyer in reasonable anticipation of litigation. It is recommended that they need not be produced.

Document 1103 is an exchange of e-mails between KPMG members regarding a law firm opinion letter issued to mutual clients. The only portion of the e-mails which discusses facts related to a legal opinion sufficient to bring it within the scope of the attorney client privilege is found in the last two sentences of the first paragraph of the e-mail of April 12, 1999 @ 12:00PM. There is no showing that the document is privileged under either the work product or § 7525 privileges nor have the remaining portions of the document been shown to be protected from production by the attorney client privilege. It is recommended that the document be produced subject to the redaction of the last two sentences of the first paragraph of the April 12, 1999 @ 12:00PM e-mail.

Document 1104 is similar to Document 1103 except that it contains one more e-mail response which has not been shown to be privileged under any of the three claimed privileges. It is recommended that it be produced subject to the redaction of the material referred to with respect to Document 1103.

Document 1115 is now claimed not to be responsive to the IRS summonses. A review of the document supports that conclusion. It appears to have been inadvertently included since it does not appear to relate to the category of documents under discussion. It is recommended that it need not be produced.

Document 1156, 1158 and 1159 are duplicate memorandum memorializing a conversation with a lawyer concerning the audit of a mutual client's tax return. The documents are claimed to be privileged under the attorney client privilege, the work product privilege and the § 7525 privilege. The attorney client privilege does not apply because there is no showing that KPMG sought to become a client of the lawyer or seek any legal advice from the lawyer. On the contrary, the memos disclose that certain tax advice was given the lawyer. Nor does the work product privilege apply because there is no showing that they were prepared by a lawyer in reasonable anticipation of litigation. However, since the documents memorializes tax advice given a lawyer on behalf of their mutual client by a tax preparer, the documents have been shown to be subject to the § 7525 privilege. It is recommended that these documents need not be produced.

Documents 1157 and 1161 are duplicates. They memorializes a conversation between the same KPMG personnel and the same lawyer involved in the Document 1156 memo. However these documents contains no tax advice. They merely inform the lawyer of certain past events. Since they contain no tax advice they have not been shown to be subject to the § 7525 privilege. Moreover, they are not protected under the attorney client or work product privilege for the same reasons stated with respect to Document 1156. It is recommended that these documents be produced.

Document 1160 memorializes a conversation between KPMG and a tax client. It merely informs him of certain past events and contains no tax advice. Since it contains no tax advice, it is not protected by § 7525. Moreover there is no showing that KPMG disclosed any factual information to a lawyer so as to obtain legal advice or to be used in a legal proceeding, therefore the attorney client privilege has not been shown to be applicable. Lastly, there is no showing that the document was prepared by a lawyer in anticipation of litigation so the work product privilege is not applicable. It is recommended that the document be produced.

Document 1164 is an exchange of e-mails among KPMG personnel including associate general counsel. The document is claimed to be subject to the attorney client , work product and § 7525 privileges. The e-mails discuss procedures involving opinion letters. There is no showing that they seek any legal opinion or advice from legal